IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2767 OF 2001

Suresh Dattatraya Kulkarni. ...Petitioner.

Vs.

The N.S.D.Industrial Home for
the Blinds and Ors. ...Respondents.

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Mr.R.V.Pai with Mr.A.A.Kocharekar for the Petitioner.

Mr.A.S.Tungare for Respondent Nos.1 and 2.

Mr.P.M.Mokashi, AGP for Respondent Nos.3 to 5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 16, 2005.

P.C. :

The Petitioner who, at the material time, was a Superintendent with the First Respondent was issued a chargesheet dated 8th September 1998 for a disciplinary enquiry into the allegation that on 2nd July 1998, he was guilty of an act of misbehaviour in the premises of the First

Respondent while under the influence of alcohol. The Petitioner submitted his replies on 17th August 1998 and 9th September 1998 and substantially accepted that he had been under the influence of alcohol when the incident took place. However, the Petitioner claimed that he was undergoing treatment for alcoholism with a non-governmental organisation by the name of Alcoholics Anonymous and that a sympathetic view should be taken since he was afflicted with the problem and for which he was undergoing treatment. The Enquiry Officer held the Petitioner guilty of the charge of misconduct on 16th October 1998. After a notice to show cause was issued to the Petitioner calling upon him to explain why the report should not be accepted, he was terminated from service on 12th June 1999. The Petitioner carried the matter in appeal before the Divisional Social Welfare Officer who dismissed the appeal by the impugned order which is annexed at Exh.P to the Petition.

The grievance of the Petitioner is that the Divisional Social Welfare Officer has travelled far beyond the Articles of charge and has held the Petitioner guilty of misconduct which was not the subject of the disciplinary proceedings. Among the findings of the Divisional Social Welfare Officer,

is a finding that the Petitioner had been guilty of misusing an official telephone; that on an earlier occasion on 13th October 1995, the Police had removed the Petitioner to the K.E.M. Hospital when he was under the influence of alcohol; that the Petitioner had instigated other employees of the establishment to consume alcohol and to indulge in gambling and that he had unlawfully sold the property of the employer in order to generate moneys for the pursuit of his drinking habit. Ex-facie it would appear that several of these findings which are commented upon by the Divisional Social Welfare Officer, do not form the subject matter of the Articles of charge contained in a chargesheet dated 8th September 1998. Though a disciplinary proceeding is not governed by the strict rules of evidence, the fundamental principles of natural justice do apply. It is, therefore, necessary and proper that the employee should have due notice of all the charges which are sought to be established against him.

At the hearing of the Petition, Counsel appearing on behalf of the First and Second Respondents and the AGP for Respondent Nos.3, 4 and 5 stated that having regard to this infirmity contained in the order of the Divisional Social

Welfare Officer, it would be appropriate and proper, if the matter is remanded back to the appellate authority for passing fresh orders after hearing the parties. Since the First Respondent has an objection to the maintainability of the appeal, it is clarified that the appellate authority shall consider all the objections of the First Respondent as well together with all the contentions that the rival parties seek to urge before him. In order to facilitate a fresh determination by the Divisional Social Welfare Officer, the impugned order at Exh.P is quashed and set aside without the expression of any opinion by this Court on the merits of the case. Parties are directed to appear before the Divisional Social Welfare Officer at 11 a.m. on 21st March 2005. The appellate authority shall hear parties and pass final orders on the appeal in any event on or before 30th April 2005. An interim protection in respect of the service accommodation was granted by the Division Bench on humanitarian grounds, pending disposal of this Petition, on 24th September 2001. In view of the order of remand, the Petitioner shall not be evicted pending the decision of the appellate authority.

The Petition shall accordingly stand

disposed of. There shall be no order as to costs.

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